SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 117

HUNTER A. GIBBES, REPRESENTING HIMSELF AND ALL OTHER DEPOSITORS OF THE CENTRAL UNION BANK OF SOUTH CAROLINA, ETC., APPELLANT,

vs.

SIMPSON J. ZIMMERMAN, INDIVIDUALLY AND AS CONSERVATOR OF THE CENTRAL UNION BANK OF SOUTH CAROLINA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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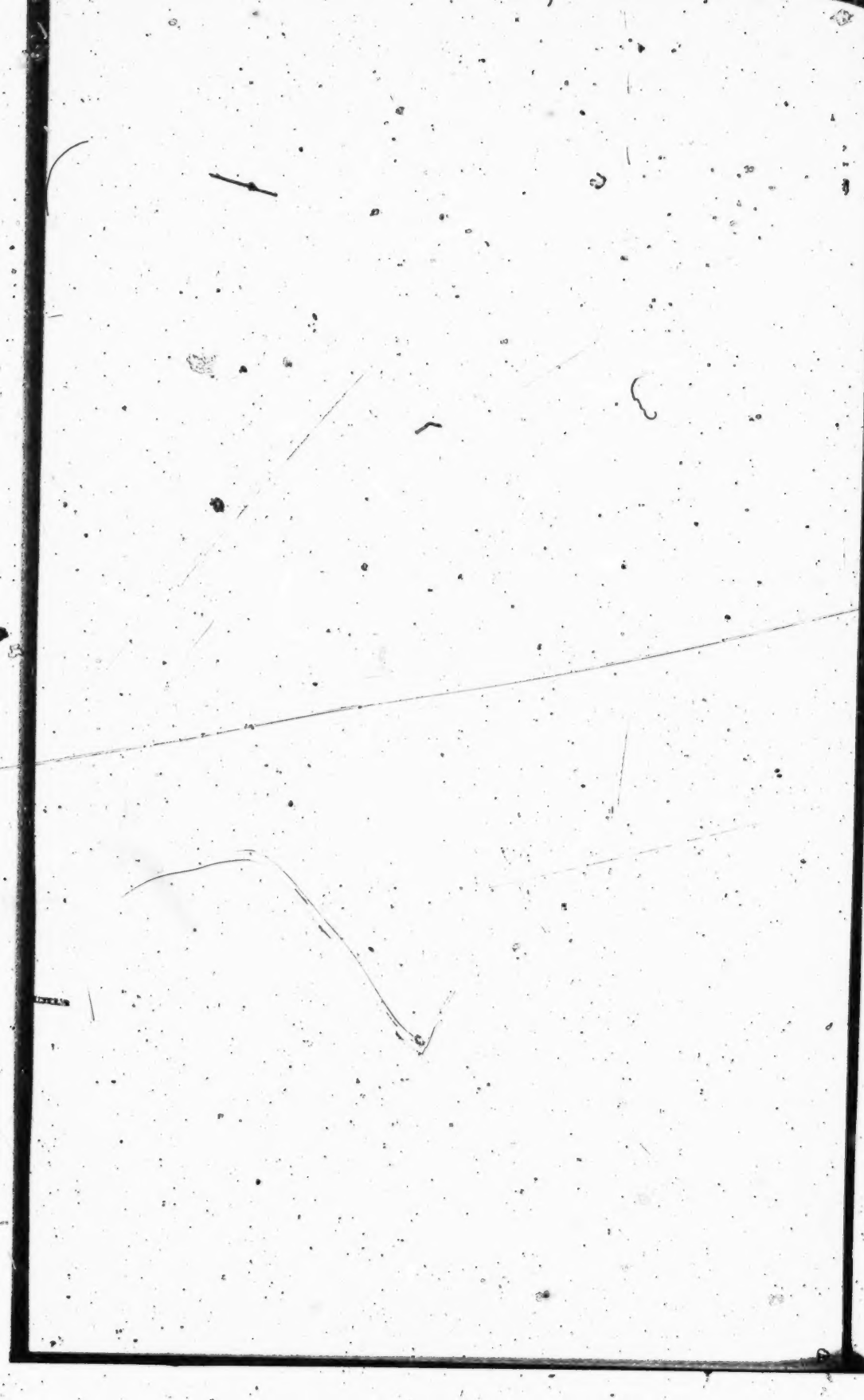

[fols. 1-4]

IN SUPREME COURT OF SOUTH CAROLINA

In the Original Jurisdiction

STATE OF SOUTH CAROLINA ex Relatione SIMPSON J. ZIMMERMAN, Individually and as Conservator of the Central Union Bank of South Carolina; Ibra C. Blackwood, Governor of the State of South Carolina, and Julian Scarborough, as a Member of and Representing the South Carolina Board of Bank Control, Petitioners,

against

HUNTER A. GIBBES, Representing Himself and All Other Depositors of the Central Union Bank of South Carolina Similarly Situated; the Court of Common Pleas for Richland County, and the Honorable W. H. Townsend, as Resident Judge of the Fifth Judicial Circuit, Respondents

ALTERNATIVE WRIT OF PROHIBITION

To the Respondents above named:

Upon reading and considering the annexed verified Petition, and upon motion of John M. Daniel, Attorney General, J. Ivey Humphrey, Assistant Attorney General, and of Melton & Belser, Attorneys for the petitioners,

You are hereby ordered and directed to show cause, if any you can, before the Supreme Court of South Carolina, at the Supreme Court Room, at Columbia, S. C., on Friday, April 14, 1933, at 3:30 P. M., why the relief prayed for in the Petition herein should not be granted and why a final Writ of Prohibition should not be forthwith issued to the [fol. 5] said Hunter A. Gibbes as plaintiff in the said suit mentioned in said Petition, to the Court of Common Pleas for Richland County, and to the Honorable W. H. Townsend as Resident Judge of the Fifth Judicial Circuit, restraining and enjoining them from further proceedings in the said cause and dissolving and dismissing the Rule to Show Cause and temporary restraining order therein issued and dismissing the said suit; and unless you show sufficient cause you are hereby so restrained and enjoined

and the said Writ of Prohibition will be issued and the relief prayed for in the Petition will be granted.

Let a copy of this Order be forthwith served upon the said Hunter A. Gibbes by delivery of a copy thereof to him personally, and upon the Court of Common Pleas for Richland County by delivery of a copy thereof to the Clerk of said Court, and to the Honorable W. H. Townsend, Resident Judge of the Fifth Judicial Circuit, by delivery of a copy thereof to him personally.

John G. Stabler, Associate Justice of the — South Carolina.

Columbia, S. C., 12 April, 1933.

[fol. 6] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR WRIT OF PROHIBITION

To Hon. Eugene S. Blease, Chief Justice; Hon John G. Stabler, Associate Justice; Hon. Jesse F. Carter, Associate Justice; Hon. T. P. Cothran, Associate Justice; Hon. M. L. Bonham, Associate Justice, as members of and constituting the Supreme Court of South Carolina:

This petition of the undersigned, Simpson J. Zimmerman individually and as Conservator of Central Union Bank of South Carolina, Ibra C. Blackwood, Governor of the State of South Carolina, and Julian Scarborough, as a member of and representing the South Carolina Board of Bank Control, petitioners, respectfully shows to this Honorable Court:

[fol. 7] 1. That the petitioner, Simpson J. Zimmerman, is a resident and citizen of the City of Columbia, S. C., and has recently been duly appointed Conservator of the Central Union Bank of South Carolina, a banking corporation organized and existing under the laws of the State of South Carolina, and is also a depositor in the said Bank, and that as such Conservator said petitioner is specifically charged with the responsibility for the administration of the affairs of the Central Union Bank of South Carolina under the Governor and the South Carolina Board of Bank Control.

2. That your petitioner, Ibra C. Blackwood, is the Governor of the State of South Carolina, and is also a member of the Board of Bank Control created under the Act hereinafter mentioned; and that your petitioner, Julian Scarborough, is the Treasurer of the State of South Carolina, and is also a member of the said Board of Bank Control; that said petitioner Ibra C. Blackwood as Governor of the State of South Carolina and Julian Scarborough as Treasurer of the State of South Carolina are members of the South Carolina Board of Bank Control appointed under the South Carolina Banking Act of March 9, 1933, and as members of such Board are charged with the responsibility of administering and conserving the assets of all the banks in the State of South Carolina, including the said Central Union Bank of South Carolina.

3. That Hunter A. Gibbes is a resident and citizen of Columbia, S. C., and has recently instituted a suit in the Court of Common Pleas for Richland County against these petitioners among others, purporting to act on behalf of himself and other depositors, in which the said Hunter A. Gibbes seeks among other things to have the South Carolina Banking Act passed by the South Carolina General Assembly and approved on March 9, 1933, declared unconstitutional, and also to have a Receiver appointed for the said [fol. 8] Central Union Bank of South Carolina and the said Bank liquidated in said Court; that a copy of said complaint is hereto attached and made a part of this petition.

4. That in connection with the said suit and based thereon the Hon. W. H. Townsend, Judge of the Fifth Judicial Circuit, issued a rule to show cause directing petitioners to show cause before him on May 4, 1933, why the relief prayed for should not be granted, accompanied by a temporary restraining order restraining all persons, including these petitioners, from proceeding in any court in connection with the assets and affairs of the said Central Union Bank of South Carolina except in and through the said proceeding; that a copy of such rule to show cause is also hereto attached and made a part of this petition.

5. That the said suit instituted by the said Hunter A. Gibbes is, as these petitioners are advised and believe, in direct conflict with the said Banking Act passed by the South Carolina General Assembly and approved on March

9, 1933, and is expressly prohibited by the said Act, and that the said suit was and is beyond, and in excess of, the jurisdiction of the said Court of Common Pleas for Richland County and of said Judge W. H. Townsend as the Judge thereof, and that the granting of the said rule to show cause and temporary restraining order was and is entirely unwarranted and illegal, and is and should be declared to be null and void.

6. That the said South Carolina Banking Act of March 9, 1933, was passed, as your petitioners are informed and believe, for the express purpose among other things of preventing suits such as the above mentioned suit instituted by the said Hunter A. Gibbes; that the institution of such a suit is expressly prohibited by the terms of the said Act, copy of which is hereto attached.

[fol. 9] 7. That the institution and pendency of the said suit is causing and will continue to cause to your petitioners, and to the many members of the public generally whom they represent, great and irreparable loss and damage; that the said suit and rule to show cause and temporary restraining order prevent petitioners from effectively and advantageously administering the affairs of the said Central Union Bank of South Carolina and of many other banks in the State of South Carolina, and cause great uncertainty and confusion as to the powers and responsibilities of your petitioners, resulting in great loss to the many depositors and creditors of the banks in the State of South Carolina, which have been placed in the hands of conservators pursuant to the provisions of said Act of the Legislature.

8. That your petitioners, pursuant to the duties and powers vested in them, are having an audit and investigation made as to the condition and affairs of the said Central Union Bank of South Carolina, but that the said audit has not yet been completed and it is impossible at this time to ascertain what is the true condition of the said Bank; that moreover the Board of Bank Control has heretofore issued instructions for notices to be sent out to the stockholders and directors of the said Central Union Bank of South Carolina (and of all the other Banks in the hands of Conservators) to hold meetings and advise prior to the 1st of May, 1933, as to whether the said Banks are to be or can be reorganized and reopened, and that such notices are about

to be issued by petitioners; that it is impossible to tell at this time, and prior to the completion of the said audit, whether or not the said banks will be reorganized or liquidated, and that the pendency of the said suit and Rule to Show Cause and temporary restraining order are prejudicial to the best interests of the said Bank and of its depositors and creditors.

[fol. 10] 9. That under these circumstances, as your petitioners are advised and believe, this Honorable Court should issue its writ of prohibition enjoining and restraining the said Hunter A. Gibbes as plaintiff, and the Court of Common Pleas for Richland County and the Hon. W. H. Townsend as the Resident Judge of the Fifth Judicial Circuit, from proceeding any further in connection with the said suit, and also directing and enjoining the said Judge Townsend to dissolve and vacate the said rule to show cause and temporary restraining order.

10. That your petitioners are without any other adequate remedy except by application to this Court for the said writ of prohibition; that the pendency of said suit ties the hands of the petitioners, causes uncertainty as to their powers and duties, and seriously hampers the administration of the affairs of the said banks; that it is impracticable to make application to the said Court of Common Pleas for Richland County for relief or to appeal from any adverse ruling by said Court without great delay and irreparable loss and prejudice.

11. That this is a matter of great pulbic importance, that it involves the constitutionality of the Banking Act of March 9, 1933, which was passed as an emergency measure in the present financial emergency; that the said Act is of great importance to the entire State of South Carolina and to all its inhabitants, affecting thousands and thousands of depositors and others interested in the Banks in the State of South Carolina; that the said Act was passed in the public interest and is and was entirely proper and constitutional, and that it is of great public importance that the said Act be construed and declared constitutional and upheld, and that the above mentioned suit and all the resulting uncertainty incident thereto be removed and prohibited; that the Board of Bank Control set up under the said Act [fol. 11] has issued various rules and regulations, copies of

which are hereto attached, and has appointed Conservators for numerous banks in the State of South Carolina, and that it is of urgent public importance that the said Act be construed and declared constitutional by this Honorable Court, and that suit be prohibited and dismissed.

Wherefore petitioners pray that a writ of prohibition be forthwith issued to the said Hunter A. Gibbes as plaintiff in the said suit, and to the Court of Common Pleas for Richland County and to Hon. W. H. Townsend, as Judge of the Fifth Judicial Circuit, restraining and enjoining them from further proceedings in the said case, and dissolving and dismissing the rule to show cause and temporary restraining order therein issued, and dismissing said suit.

John M. Daniel, Attorney General; J. Ivey Humphrey, Asst. Attorney General; Melton & Belser, Attorneys for Petitioners.

Columbia, S. C., April 12, 1933.

[fol. 12] *Duly sworn to by S. J. Zimmerman and J. H. Scarborough. Jurats omitted in printing.*

[fol. 13] IN COURT OF COMMON PLEAS OF RICHLAND COUNTY

HUNTER A. GIBBES, Representing Himself and All Other Depositors Similarly Situated, Plaintiff,

against

SIMPSON J. ZIMMERMAN, Individually and as Conservator of Central Union Bank; Honorable Ibra C. Blackwood, Governor of the State of South Carolina; Honorable Julian Scarborough, as a Member of and Representing the South Carolina Board of Bank Control; Albert S. Fant, State Bank Examiner; Richland County, South Carolina; the City of Columbia, and John Doe, Defendants

RULE TO SHOW CAUSE

To the defendants above named:

You, and each of you, are hereby required to show cause before me at Chambers in Columbia, S. C., on the fourth

day of May, 1933, at eleven o'clock A. M., or as soon thereafter as counsel can be heard, why the prayer of the complaint should not be granted.

Upon the plaintiff giving a written undertaking, without surety, to the effect that the plaintiff will pay to the parties enjoined such damages, not exceeding the sum of five hundred dollars, as they may sustain by reason of the injunction, if the Court shall finally decide that the plaintiff was not entitled thereto; it is ordered that pending the return to the said rule, all depositors and creditors of Central Union [fol. 14] Bank of South Carolina are restrained from proceeding against the said Bank, its officers, stockholders, or its assets in any way except in this action and the defendants in this action are also restrained from proceeding in any court, in any way, in connection with the affairs and assets of the Central Union Bank except in this proceeding.

W. H. Townsend, Judge Fifth Circuit.

April 11, 1933.

[fol. 15] In Court of Common Pleas of Richland County

[Title omitted]

Complaint

The plaintiff complaining of the defendants, alleges:

1. That plaintiff is now, and was at the time the Central Union Bank of South Carolina closed for business, at the end of the business day of March 4, 1933, a depositor in said Bank; and he brings this action in behalf of himself and all other creditors and depositors of said Bank.

2. That the plaintiff and the defendants named herein are residents of Richland County, State of South Carolina; the Honorable Ibra C. Blackwood is Governor of the State of South Carolina; the Honorable Julian Scarborough is Treasurer of said State; and a member of the South Carolina Board of Bank Control, being made a party to this suit representing himself and the other members of this

[fol. 16] Board; on information and belief, that Simpson J. Zimmerman is a depositor in the Central Union Bank of South Carolina, and was an officer and employee thereof prior to March 4, 1933, and has been appointed Conservator of the Central Union Bank of South Carolina by the Governor of South Carolina and the State Board of Bank Control, and Albert S. Fant is Bank Examiner of the State of South Carolina.

3. That the Central Union Bank of South Carolina is a banking corporation with its principal place of business in Richland County, State of South Carolina, with branch offices in Rock Hill, S. C., and Greenwood, S. C., and perhaps in other places. That this Bank suspended its regular banking functions on or about the close of business hours on the 4th day of March, 1933, and since that time, as this plaintiff is informed and believes, has paid out nothing to its depositors and has failed and refused to pay anything to the depositors on account of the deposits in it which were existing on or before March 4, 1933.

4. That the defendants other than the Conservator, the Governor and the members of the South Carolina Board of Bank Control, are, as this plaintiff is informed and believes, depositors, secured or unsecured, of the Central Union Bank of South Carolina, and are made parties to this suit representing themselves and all other depositors and creditors of the bank.

5. That since the appointment of the Conservator for the Central Union Bank, the bank has been receiving special trust accounts and exercising limited banking functions in receiving these deposits and paying out moneys on these deposits, but on information and belief, that the expenses of these operations are not being borne by the special trust account themselves, but are a portion of the overhead of the business which is being charged against the assets of the bank, which assets should be preserved for the depositors [fol. 17] who were in existence on March 4, 1933, and that the conduct of the Conservator in operating his trust accounts results in a depletion of the assets which should otherwise be applied to the liquidation of the amounts due to the depositors and creditors of the Bank.

6. That pursuant to an Act of March 9, 1933, a Board of Bank Control has been appointed by the Governor of the State of South Carolina, including among its members the Honorable Julian Scarborough, who is made a party to this action representing himself and all members of said Board. That the Governor and the Board, pursuant to the authority of this Act, have appointed Simpson J. Zimmerman as Conservator for this Bank for an indefinite period of time. That the depositors of the Bank under the terms of this Act are prevented from bringing any action against the Bank itself without the approval of the Governor. That the plaintiff herein has asked the Governor for authority to bring action against the Bank for the purpose of determining its solvency and for providing for its orderly liquidation, but said request has to date been refused by the Governor of the State.

7. That this plaintiff has also requested the Governor to allow him access to the last records giving the true condition of the Central Union Bank, but he has been refused access to these records or information which would lead him to reach a conclusion as to the chances of a reorganization of the Bank, as to the chances of reopening the Bank, or as to whether the affairs of the bank are in such condition as to require the liquidation of its assets.

8. Further, on information and belief, a considerable amount of the stock of said Bank is held in the name of certain dummy or holding corporations contrary to the laws of this State and for the purpose of enabling certain officers of said Bank to hold their positions, draw their salaries [fol. 18] and escape the regular stockholders' liability to depositors as provided by our Constitution and laws.

9. That this plaintiff alleges, on information and belief, that there is practically no chance of reopening of the Bank or of its reorganiz-tion, and that its property and assets should be liquidated by and under the orders of the Court and applied to the payment of its debts to depositors and creditors.

10. That pursuant to the terms of the aforesaid Act, the Honorable Albert S. Fant, State Bank Examiner, has been

restrained from taking charge of the Bank and from calling in the depositors and creditors for the purpose of liquidation procedure as is usual in the case of insolvent banks.

11. As plaintiff is advised and believes, said Act of the General Assembly of South Carolina and acts and rulings of the Board of Bank Control, are unconstitutional, null and void. They enable the said Conservator to take charge and possession of the property and assets of said Bank, including the property and deposit of this plaintiff, without an opportunity to the plaintiff to be heard, and enable said Conservator to continue the business of the Bank at the expense and risk to the property of the plaintiff and other depositors, and deprive the plaintiff and like depositors of their property, of their contractual rights under the Constitution and laws of the State to forthwith enforce the liability of stockholders.

12. That there is danger of depositors bringing various individual actions in connection with the assets of this bank which are likely to result in serious loss to the rights of the general depositors therein.

13. On information and belief, that certain of the secured depositors or creditors of the bank, pursuant to their rights under the security or collateral agreements, intend to sell [fol. 19] their collateral and realize on the proceeds thereof, which is likely to result in substantial losses to the unsecured depositors and creditors of the bank.

14. On information, advise and belief, that the aforesaid Act and the statute laws of the State of South Carolina in regard to the liquidation of banks do not deprive this Court of its general equity jurisdiction to take over the affairs of an insolvent banking corporation or a banking corporation which has suspended business, and is in danger of insolvency; and this plaintiff alleges, on information and belief, that the Central Union Bank of South Carolina is insolvent.

15. That in order to properly protect the interests of the depositors and creditors of the Central Union Bank, particularly the unsecured depositors and creditors, this Court in the exercise of its general equity jurisdiction, should investigate into the condition of the affairs of the

bank, restrain depositors from proceeding against the bank or against the assets of the bank, except in this action; should require the Governor of the State of South Carolina, The South Carolina Board of Bank Control and the Conservator of the Central Union Bank to come into this action and make a showing as to the true condition of the bank; should conserve and preserve the assets and property of said bank, for its rightful creditors and depositors.

16. That plaintiff has no adequate remedy except in this Court.

Wherefore this plaintiff prays:

1. That a rule to show cause be issued, directed to the defendants, requiring them to show cause at such time as the Court may see fit why the prayer of the complaint should not be granted.

2. That all depositors and creditors of the Central Union Bank of South Carolina be restrained from proceeding in [fol. 20] any way against the Bank, its officers, stockholders, employees or its assets, except in this action.

3. That the Conservator, the Governor of the State of South Carolina and the South Carolina Board of Bank Control be required to show in this action the true condition of the affairs of the Bank; and that plaintiff be allowed full access to the Bank Examiner's records, data and reports on and of said Bank.

4. That the Act of the General Assembly of South Carolina passed on March 9, 1933, creating a State Bank Board, restraining actions by depositors, except by consent of the Governor, providing for conservators for banks and for other purposes, be declared invalid, null and void, in so far as the same undertakes to prevent plaintiff and other depositors of the Central Union Bank from bringing and prosecuting this action.

5. That the Court take such steps and issue such orders from time to time, as it may deem proper to preserve the properties and assets of the said bank during the pendency of this action and until the further orders of the Court.

6. That pending the return to the Rule to Show Cause, a restraining order be issued preventing the defendants

and all depositors and creditors of the Bank from proceeding, except as herein set out.

7. For a Receiver to take charge of the property and assets of said Bank.

8. For the enforcement and collection in this action of the stockholders' liability under the Constitution and laws of this State for the use and benefit of the plaintiff and all other depositors.

9. And for such other and further relief as plaintiff may be entitled to in the premises.

D. W. Robinson, Attorney for Plaintiff.

April 11, 1933.

[fol. 21] *Duly sworn to by Hunter A. Gibbes. Jurat omitted in printing.*

A bill to authorize and direct the Governor of the State of South Carolina to assume plenary control of the State Banking Department and of all banks, banking institutions, building and loan associations, cash depositories, or other institutions doing a banking business of whatever nature, and to make, issue and promulgate such rules, regulations and/or instructions as may be necessary to direct, control and protect such banks, banking institutions, building and loan associations and cash depositories and depositors and to provide penalties for violation of such rules and regulations, and to regulate litigation in reference thereto, and to authorize the establishment or incorporation of a State Clearing House Association if necessary.

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. From and after the passage of this Act the Governor of the State of South Carolina is hereby vested [fol. 22] with plenary powers to assume supervision and control of the Banking Department and the banks of the State of South Carolina, depositories, Building and Loan Associations, and all other institutions that accept and pay deposits, subject to the provisions of this Act.

Section 2. The Governor in his discretion and whenever in his judgment circumstances warrant it is empowered to:

"(a) Authorize, permit or direct and require, individually or collectively all banking corporations, Building and Loan Associations, cash depositories and all others doing a banking business within the State of South Carolina, under his supervision, to extend for such period and upon such terms as he deems necessary and expedient, payment of any demand and/or time deposits, such period and terms to be separately governed by the condition of each bank or other banking institution."

"(b) Permit, upon such terms as he may deem advisable, the issuance of clearing house certificates or other evidence of claims against assets of such banking corporations, Building and Loan Associations, cash depositories and all others doing a banking business within the State of South Carolina which agree thereto."

"(c) Authorize and direct the creation in such banking institutions, Building and Loan Associations, cash depositories and all others doing a banking business within the State of South Carolina of special trust accounts for the receipt of any deposits, which deposits shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separate in cash or on deposit in their respective correspondent banks as similar special trust accounts or invested as the governor may permit."

"(d) Promulgate for such banks, banking institutions, Building and Loan Associations and cash depositories such regulations as are necessary in his discretion to enable such [fol. 23] banks, banking institutions, Building and Loan Associations and cash depositories to comply fully with the Federal regulations prescribed for state and/or national banks."

"(e) To look into and determine whether or not the overhead expense of any institution embraced within the terms of this Act exceed the net income of said institution and in case such conditions are found to exist, he is hereby authorized and required to reduce such overhead expenses as his judgment may direct or proceed to order liquidation of such institutions as he may deem best for the interest of depositors."

"(f) Set up and establish, if advisable, a State Clearing House Association, under such rules and regulations as may be proper for such purpose, taking such securities as may be approved for such purpose, and empowering such State Clearing House Association to issue against such security or securities certificates of such denominations as may be necessary to facilitate exchange of a statewide nature: Provided, that such State Clearing House Certificates may be issued to the State of South Carolina and/or any political sub-division thereof on such proper security as may be deposited for such purpose, to be approved by the Governor, or the State Board of Control herein authorized to be established. In lieu of a State Clearing House Association, the Governor shall have power and authority to permit the incorporation of a State Clearing House Association whose capital stock shall be owned by such Banks, Banking Institutions, Building and Loan Associations and Cash Depositories, as may subscribe thereto, under such rules and regulations as he may deem proper for such purpose, which corporation shall be permitted to issue against adequate securities to be determined by the Governor certificates of such denomination as may be necessary to facilitate exchange of a State-wide nature, Provided, that such corporation may issue certificates to the [fol. 24] State of South Carolina, and/or any political subdivision thereof, on such proper securities as may be deposited for such purpose, to be approved by the Governor. Provided, further, That the number of directors of such corporation shall not exceed twenty nor be less than ten; that certificates issued under this sub-division shall be received at their face value in payment of taxes or other dues to the State of South Carolina or to any political subdivision thereof, and in payment of debts to any corporation chartered by the State of South Carolina. Such certificates shall not be subject to any stamp taxes by the State of South Carolina or any political subdivision thereof."

Section 3. The Governor is hereby authorized, empowered and directed to make all necessary rules and regulations and to give all instructions with respect to banks, banking institutions, building and loan associations and cash depositories which he may authorize, permit and/or direct and required to be conducted under the provisions of this Act. And it shall be the duty of all such banks, bank-

ing institutions, building and loan associations and cash depositories and their officers, agents and employees to comply fully with any and all such rules, regulations and instructions established and promulgated by the Governor with respect to such banks, banking institutions, building and loan associations and cash depositories under the terms of this Act; and such orders, rules and regulations shall have the same force and effect as rules, regulations and instructions promulgated under the present banking laws.

Section 4. The State Bank Examiner is hereby prohibited, during the period while this Act shall remain in force, unless first authorized to do so by the Governor, from taking possession of any bank, banking institution, building and loan association or cash depository under his su- [fol. 25] pervision, either under resolution of its directors or through legal proceedings for failure to meet its liabilities while such bank, banking institution, building and loan association or cash depository shall be operated under the terms of this Act and the said bank examiner is hereby relieved from any and all liabilities for permitting such banks, building and loan associations or cash depositories to continue operation in accordance herewith. And all persons, firms or corporations are hereby prohibited, while the Governor is in control of the banks, banking institutions, building and loan associations or cash depositories under the provisions of this Act, from instituting any legal proceedings of any nature whatever against any bank, banking institution, building and loan association or cash depository, without first obtaining the written approval of the Governor. Provided, This provision shall not apply to actions already commenced or hereafter to be commenced against or in connection with any banking institution under liquidation by receivers appointed prior to March 1, 1933. Provided, further, That the provisions of this Act shall not apply to banks now in the hands of the State Bank Examiner for the purpose of liquidation or reorganization.

Section 5. Nothing herein contained shall in any wise change the present satus of collateral pledged to secure any deposit account.

Section 6. All scrip or other evidence of indebtedness issued by any bank, building and loan association, cash

depository or other banking institution hereafter shall be issued only upon approval by the Governor.

Section 7. The Governor is hereby specifically authorized and empowered, in his discretion, to appoint a board of bank control to advise and consult with him and to vest them with such power and authority as he deems necessary to carry out the provisions of this Act.

[fol. 26] Section 8. Any violation of the provisions of this Act or any of the duly promulgated rules or regulations issued under the authority of this Act shall be punishable by fine not exceeding Five Thousand ($5,000.00) Dollars or imprisonment not exceeding two (2) years.

Section 8-A. The State of South Carolina shall incur no obligation or liability in connection with the operation of the provisions of this Act.

Section 8-B. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the applicability of such provisions otherwise shall not be affected thereby.

Section 9. All Acts or parts of Acts inconsistent with this Act are hereby suspended to the extent of such inconsistency while this Act is in effect.

Section 9-A. All stockholders of institutions within the purview of this Act are hereby prohibited from transferring, selling or otherwise disposing of stock in said institutions.

Section 10. This Act shall take effect immediately upon its approval by the Governor. Provided, however, That the authority and powers granted by this Act shall cease and determine eighteen (18) months from the date of the approval hereof, unless continued by the General Assembly of this State.

Approved by the Governor the 9th day of March, 1933.

The following resolution was offered by Mr. R. E. Henry, duly seconded by Mr. Burnet R. Maybank, and passed:

That the following order providing for the appointment of Conservators for certain State Banks and Cash Deposi-

tories in the State of South Carolina be, and the same is hereby adopted:

[fol. 27] "(1) Whenever the Governor of the State of South Carolina, upon the advice of the Board of Bank Control shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the Governor may appoint one or more conservators for such bank and require of him such bond and security as the Governor deems proper. The conservator or conservators, under the direction of the Governor, shall take possession of the books, records and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator or conservators shall have all the rights, powers and privileges now possessed by or hereafter given Receivers of insolvent state banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject.

During the time that such conservator or conservators remain in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this order, be the same as if a receiver had been appointed therefor. All expenses of any such conservatorship shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this act or otherwise. The conservator or conservators shall receive as salary an amount to be hereafter fixed by the Governor upon the advice of the Board of Bank Control.

(2) The Governor shall cause to be made such examination of the affairs of such banks as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Governor at the earliest possible date.

[fol. 28] If the Governor becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transactions of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.

While such bank is in the hands of the conservator or conservators appointed by the Governor, the Governor may require the conservator or conservators to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the Governor may safely be used for this purpose; and the Governor may, in his discretion, permit the conservator or conservators to receive deposits, but deposits received while the bank is in the hand of the conservator or conservators shall not be subject to any limitations as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator or conservators were appointed for it, or any subsequent indebtedness incurred for the purposes of liquidating any indebtedness of such bank existing at the time such conservator or conservators were appointed. Such deposits received while the bank is in the hands of the conservator or conservators shall be kept on hand in cash, or deposited with a Federal Reserve Bank.

Rules for Reorganizing

(3) In any reorganization of any bank under a plan of a kind which, under existing law, required the consent as the case may be, (a) of depositors and other creditors or (b) of stockholders or (c) of both depositors and other creditors and stockholders, such reorganization shall become effective only (1) when the Governor shall be satisfied that the plan of reorganization is fair and equitable as [fol. 29] to all depositors, other creditors and stockholders and is in the public interest and shall have approved the plan subject to such conditions, restrictions and limitations as he may prescribe and (2) when, after reasonable notice of such reorganization, as the case may require, (a) depositors and other creditors of such bank representing at least 75 per cent in amount of its total deposits and other liabilities as shown in the books of the bank of (b) stockholders owing at least two-thirds of its outstanding capital stock as shown by the books of the bank or (c) both depositors and other creditors representing at least 75 per cent in amount of the total deposits and other liabilities and stockholders owning at least two-thirds of its outstand-

ing capital stock as shown by the books of the bank, shall have consented in writing to the plan or reorganization: Provided, however, that claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the 75 per cent thereof as above provided.

When such reorganization becomes effective all books, records and assets of the bank shall be disposed of in accordance with provisions of the plan and the affairs of the bank shall be conducted by its Board of Directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the Governor. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan or reorganization.

[fol. 30] Notice of Reopening

(4) After fifteen days after the affairs of a bank shall have been been turned back to its Board of Directors by the conservator or conservators, either with or without a reorganization as provided in Section 3 hereof, the provisions of Section 2 of this order with respect to the segregation of deposits received while it is in the hands of the conservator or conservators and with respect to the use of such deposits to liquidate indebtedness of such bank shall no longer be effective: Provided, That before the conservator or conservators shall turn back the affairs of the bank to its Board of Directors he or they shall cause to be published in a newspaper published in the city, town or county in which such bank is located, and if no newspaper is published in such city, town or county, in a newspaper to be selected by the Governor published in the state in which the bank is located, a notice in form approved by the Governor, stating the date on which the affairs of the bank will be returned to its Board of Directors and that the said provisions of Section 2 will not be effective after fifteen days after such date; and on the date of the publication of

such notice the conservator or conservators shall immediately send to every person who is a depositor in such bank under Section 2 a copy of such notice by registered mail addressed to the last known address of such person as shown by the records of the bank, and the conservator or conservators shall send similar notice in like manner to every person making deposit in such bank under Section 2 after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

(5) The Governor, upon the advice of the Board of Bank Control, will hereafter prescribe such further rules and regulations as he may deem necessary in order to carry out the provisions of this order.

[fol. 31] Given under the hand and seal of the Governor, under the authority and in pursuance of an Act of the Legislature of the State of South Carolina, approved March 9, 1933."

[fol. 32] In Supreme Court of South Carolina

[Title omitted]

Return to Alternative Writ of Prohibition

To the Hon. the Supreme Court:

By way of Return to the order to show cause issued in the above entitled proceeding, dated 12 April 1933, the undersigned respondent respectfully shows:

Section 15, Article V of the State Constitution, providing that the Courts of Common Pleas shall have jurisdiction in all civil cases, and original jurisdiction to issue writs of injunction, subject to appeal to the Supreme Court; and Section 15, Article I, providing that all Courts shall be public and every person shall have speedy remedy therein for wrongs sustained; I made the order to show cause based upon the complaint, both of which are correctly set forth in the petition for the writ; the restraining order being intended to preserve and maintain the jurisdiction [fol. 33] of the State Court in the administration of the affairs of the bank, in the event that the plaintiff should establish a good cause of action.

The Supreme Court now has before it the same information and knowledge that the Court of Common Pleas and the Circuit Judge had at the time of the issuance of said order; and neither the Court of Common Pleas nor said judge have any knowledge or information as to the merits of said cause, except as set out in the verified complaint, and no interest whatever therein, and will be pleased, because of the interests of a great number of citizens involved, to have this Court assume jurisdiction in the emergency existing, in order that a speedy and final decision may be had thereon.

Respectfully submitted.

W. H. Townsend, Resident Judge of the Fifth Circuit.

[fols. 34 & 34½] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

DEMURRER AND MOTION TO DISMISS

The respondents herein, without waiving but expressly reserving all their rights to file a return and answer herein, respectfully demur to the petition herein upon the ground that said petition does not state facts sufficient to constitute a cause of action of any kind and does not entitle the petitioners to any relief at the hands of this Court.

And for the same reasons, the respondents respectfully move the Court to dismiss the petition.

D. W. Robinson, Attorney for Respondents.

April 14th, 1933.

[fol. 35] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

RETURN AND ANSWER OF HUNTER A. GIBBES

Hunter A. Gibbes, representing himself and all other depositors similarly situated, one of the respondents in the above entitled action, would make this return and answer to the petition herein, and by way of return and answer would respectfully show to this Court:

1. He denies all of the allegations of said petition except in so far as the same are admitted, explained or set forth hereinafter; and further answering said petition:

2. This respondent admits the allegations of paragraphs 1, 2, 3 and 4, except that he does not admit the allegations of said paragraphs as to the validity, force and effect of said banking Act.

3. In answer to the allegations of paragraph 5; he avers that said action heretofore instituted by him conflicts with the banking Act passed and approved by the General As- [fol. 36] sembly of the State of South Carolina on March 9, 1933 as the said Act is being interpreted and administered by petitioners, in so far as it:

(a) Authorizes the taking and using of the property of the respondent and other depositors and creditors of said Bank without notice to, consent, or an opportunity to consent to such taking, by said creditors and depositors. In this respect the said Act and its interpretation are in violation of the provisions of the Constitution of this State prohibiting the taking of private property for private purposes at all, and for public purposes only after just compensation made or secured to be made; and is in violation of the provisions of the State and of the United States Constitution in the taking without due process or any process of law of the property and property rights of your respondent and other creditors and depositors in said Bank.

(b) Impairs the obligation of the contractual rights of the respondent and other depositors in said Bank, given and guaranteed to such depositors under the Constitution and laws of the State of South Carolina, conferring on and vesting in such depositors the right to claim and to enforce the stockholders' double liability in all banking corporations.

4. In answer to the allegations of paragraph 6, your respondent avers that he is not sufficiently informed as to the purpose of the passage of said banking Act therein referred to, but if the purpose was by said Act, or by the administration thereof, to take from the respondent and other creditors and depositors their rights under the Constitution and laws of the United States and of this State,

after such rights were vested and fixed, then the said Act is null and void and cannot be and should not be enforced or upheld.

[fol. 37] This respondent specifically denies that his action was or is beyond the jurisdiction of said Court of Common Pleas for Richmond County.

5. In answer to the allegations of paragraph 7, denies that the institution and pendency of the suit by respondent will injure the public in any way. Denies that it will injure the petitioners except in so far as it may interfere with the salary or compensation of one of the petitioners, allegedly appointed Conservator by the Governor of the State. On the contrary, your respondent verily believes that said action will result in great benefit to the public generally, including the depositors in this bank and the depositors in many other banks. It will assure depositors of their right to confidently rely on the double liability of stockholders as security for their deposits. Denies that the said suit will prevent the petitioners from administering and enforcing the law under, and in subordination to the Constitution and statutes of this State and in co-ordinance with the vested rights of the creditors and depositors, the real owners of said bank.

6. In answer to the allegations of paragraph 8, your respondent has no knowledge or information sufficient to form a belief as to what audit or investigation is being made by the petitoners; but he does aver, on information, advice and belief, that during a banking holiday or moratorium which was recently declared by the Governor of this State, said Banking Board was charged with the duty of ascertaining whether or not this bank was solvent and should be permitted to open. It had in its possession, as it has now, the data and reports made to the State Bank Examiner from time to time by his employees, information which respnodent has not had access to, and when it declined to permit said bank to reopen in the ordinary and [fol. 38] regular course of business, and placed the same in the hands of a Conservator, a Receiver for some purposes, it found that said bank should not be opened in and for the regular course of business and the general public thereby had notiec that they should not deposit their funds there except in the restricted manner provided in the Act.

Further, said State Banking Board, by their own acts, practically told the public (and should in their petition herein have told this Court) that said bank was not solvent, could not meet its obligations to its depositors and creditors and should be wound up and liquidated.

7. Respondent denies the allegations of paragraphs 9 and 10.

8. In answer to the allegations of paragraph 11, admit that the said suit commenced by this respondent is a matter of great public importance and that it involves the constitutionality of the said banking Act as it is now being interpreted by the said State Banking Board, and as shown in and by the proceedings herein. The act and its proper construction are of great importance and, as your respondent verily believes, can be most beneficially used and administered according to law and in co-ordination with the rights of this respondent, as well as of other depositors similarly situated all over the State in reference to this and many other banks.

For a further answer and defense:

9. That the petitioners herein were and are charged with the duty of knowing whether or not said Bank was insolvent before the time fixed by the orders and proclamation of the Governor for the reopening thereof, which has passed some [fol. 39] time since. If it was solvent, it should have been permitted to reopen and a refusal to allow it to reopen was a gross injustice to the bank, to its stockholders, depositors and creditors. If it was not proper to reopen, then it should have been and should be administered and wound up in the most expeditious and economical manner possible.

10. Under the act of March 9, 1933, and the administration thereof by the petitioners, said Bank, without notice to or knowledge of the respondent or any other depositor, was placed in the hands of the petitioner, Simpson J. Zimmerman, under the name of Conservator. He was authorized to and is engaged now in conducting a regular banking business, receiving deposits on accounts which are termed trust accounts, and agreeing to pay the checks drawn thereon. He is exercising all the rights and duties of a bank except that of lending out money, generally the principal source of income of a bank. He is incurring large expenses for cleri-

cal help, is maintaining a large building and sundry other real estate, the maintenance of which necessarily incurs large expenditures, and all of this with no source of income other than exchange on checks, and rents of an office building against which is to be charged the operating expenses, unless this banking business is superimposed upon and is being supported and maintained by the assets of the bank as it existed at the time it closed, March 4, 1933.

If the said bank is being maintained and operated on the said assets as they existed March 4, 1933, then your respondent avers that it is clearly an invasion of his and all other depositors' legal rights to have the property taken over as of the date when the bank closed, and its assets and property liquidated and administered solely for the pay- [fol. 40] ment of the claims of the creditors and depositors who are its real owners.

11. On information, advice and belief, that the appointment, duties and responsibilities of a Receiver are materially better and more advantageous for depositors and creditors than a Conservator under the provisions of the Act of 1933 as interpreted by the petitioners herein. Under the laws of this State, the Court can appoint as Receiver only a person who is disinterested; neither an officer or creditor of the insolvent institution. As interpreted by the petitioners in the case at bar, they have appointed as Conservator and put in possession and charge of all the assets and property of the bank, a man who was, up to the time of the bank becoming insolvent, an officer thereof, and by his petition herein, admittedly a depositor and creditor, and also a stockholder. The depositors and creditors have, and have had, no voice in the appointment of the Conservator.

Under the laws of this State, the stockholders, depositors and creditors have a right to an opportunity to be heard and have a voice in the selection of the Receiver. A Receiver is appointed by a reputable and responsible Judge and his administration and liquidation of the Bank is under the supervision of and amenable to the orders of the Court and he is required to report to the Court. The compensation of the Receiver is fixed and limited by recent statute laws in this State and is always subject to the control of the Court not exceeding the amount fixed in the statute.

The compensation of the Conservator is not fixed by statute and there is nothing in the petition in this case to advise the Court as to whether or not, and if so, what agreement in regard thereto has been made between the State Banking [fol. 41] Board and the Conservator, who is one of the petitioners in this case.

A Receiver is required to give a good bond in the amount fixed by the Court. So far as the petition in this case discloses, no bond has been required or fixed for the Conservator, but respondent is advised that the Conservator has given a surety bond for his own conduct for which he has paid a premium of Five Hundred ($500.00) Dollars, supposedly out of the assets of the closed bank. But respondent has no information as to any bond by any other employee and there are a number of employees under the Conservator handling the property and assets of the closed bank.

There are a number of other differences which might be drawn, all likely to arise in the difference between the appointment of a Receiver by a reputable judiciary, and the appointment of a Conservator by political executives.

12. Respondent would further respectfully call the Court's attention to the fact that the petitioners, with the fullest knowledge in their own possession as to the real status of the banking corporation, knowledge which is of great importance to this Court in this case, nowhere in their petition, so far as respondent can find, disclose that knowledge to this Court, but on the contrary are withholding this information, as it has been heretofore withheld from respondent, while they seek at the hands of the Court the exercise of one of its most drastic prerogative writs.

13. Respondent would further allege that he is and has been at all times ready and willing to have the Courts of this country pass upon the validity, force and construction of the banking act of March 9, 1933, and that he is ready to have the hearing speeded to the utmost limit to the end that [fols. 42 & 42½] the case may be heard by the Circuit Judge, passed on and carried by appeal, if deemed necessary, to this Court, for that purpose waiving practically all time requirements and allowing this Court itself to fix all requirements for a speedy appeal so that the vital questions

may be passed on either by this Court itself, or by calling to its assistance the Court en banc, if it deems proper.

Wherefore, having fully answered, the respondent asks that this action be dismissed and for costs and other and further relief.

(Sd.) D. W. Robinson, Attorney for the Respondent, Hunter A. Gibbes.

April 14, 1933.

Duly sworn to by Hunter A. Gibbes. Jurat omitted in printing.

[fol. 43] In Supreme Court of South Carolina

Case No. 483

State of South Carolina ex Relatione Simpson J. Zimmerman, Individually and as Conservator of the Central Union Bank of South Carolina; Ibra C. Blackwood, Governor of the State of South Carolina, and Julian Scarborough, as a Member of and Representing the South Carolina Board of Bank Control, Petitioners,

v.

Hunter A. Gibbes, Representing Himself and All Other Depositors Similarly Situated; Court of Common Pleas for Richland County, and the Honorable W. H. Townsend, Judge of the Fifth Judicial Circuit, Respondents

In the Original Jurisdiction

Writ of Prohibition Granted

John M. Daniel, Attorney General; J. Ivey Humphrey, Assistant Attorney General, and Irvine F. Belser, all of Columbia, for petitioners.

D. W. Robinson, of Columbia, for respondents.

Opinion No. 13638—Filed May 11, 1933

Stabler, J.:

At its 1933 session, the General Assembly passed an act, approved March 9th of that year, vesting the Governor of

the State "with plenary powers to assume supervision and control of the banking department and the banks of the State of South Carolina, depositories, building and loan associations, and all other institutions that accept and pay deposits, subject to the provisions of this Act". Section 4, in part, provides:

"* * * And all persons, firms or corporations are hereby prohibited, while the Governor is in control of the banks, banking institutions, building and loan associations or cash depositories under the provisions of this Act, from instituting any legal proceedings of any nature whatever against any bank, banking institution, building and loan association or cash depository, without first obtaining the written approval of the Governor. * * *"

Pursuant to the powers granted, the Governor appointed a board of bank control to advise and consult with him; and later, under authority of the act, Simpson J. Zimmerman was named as Conservator of the Central Union Bank of South Carolina, which has its principal place of business at Columbia.

On April 11, 1933, an action was begun in the Court of Common Pleas for Richland County by Hunter A. Gibbes, "representing himself and all other depositors similarly situated", against Zimmerman, individually and as Con- [fol. 44] servator of the Central Union Bank, the Governor of the State, and others. The plaintiff alleged, inter alia, on information and belief, that there was practically no chance of the reopening or the reorganization of the Central Union Bank; that its funds were being depleted by its present management; and that its assets should be liquidated by the orders of the Court and applied to the debts of its depositors and other creditors. The prayer, inter alia, was for the appointment of a receiver, for the enforcement of the stockholders' liability, and that the act of March 9, 1933, "be declared invalid, null and void, in so far as the same undertakes to prevent plaintiff and other depositors of the Central Union Bank from bringing and prosecuting this action".

Judge W. H. Townsend, to whom the matter was presented, issued a rule requiring the defendants to show cause before him on May 4, 1933, why the prayer of the complaint should not be granted, and by his order re-

strained the defendants in the meantime, "from proceeding in any Court, in any way, in connection with the affairs and assets of the Central Union Bank except in this proceeding".

On April 12, 1933, the present proceeding was instituted in the original jurisdiction of this Court, by the State of South Carolina, in relation to Zimmerman and other defendants named in the original suit, against Hunter A. Gibbes, plaintiff in that suit, the Court of Common Pleas for Richland County, and Hon. W. H. Townsend, Judge of the Fifth judicial circuit, seeking a writ of prohibition "restraining and enjoining them from further proceeding in the said case, and dissolving and dismissing the rule to show cause and temporary restraining order therein issued, and dismissing said suit". On the verified petition this Court granted an alternative writ of prohibition, requiring the respondents to show cause before it, on April 14, 1933, why the relief prayed for should not be granted, and why a final writ of prohibition should not issue. Judge Townsend made formal return, setting out that the Courts of Common Pleas, under the provisions of the State Constitution, have jurisdiction in all civil cases, and original jurisdiction to issue writs of injunction, subject to appeal to the Supreme Court; and that the Order to show cause made by him was based upon the complaint, and that the restraining order issued was intended to preserve and maintain the jurisdiction of the State Court in the administration of the affairs of the bank, in the event that the plaintiff established a good cause of action; and further stated that—

"The Supreme Court now has before it the same information and knowledge that the Court of Common Pleas and the Circuit Judge had at the time of the issuance of said order; and neither the Court of Common Pleas nor said Judge have any knowledge or information as to the merits of said cause, except as set out in the verified complaint, and no interest whatever therein, and will be pleased, because of the interest of a great number of citizens involved, to have this Court assume jurisdiction in the emergency existing, in order that a speedy and final decision may be had thereon."

The respondent, Hunter A. Gibbes, demurred upon the ground that the petition "does not state facts sufficient to

constitute a cause of action of any kind and does not entitle the petitioners to any relief at the hands of this *this* Court". He also made return and answer, setting forth at length his reasons why the writ should not issue, and praying for dismissal of the petition.

We think the matter may properly and correctly be disposed of by a decision of the questions: (1) Whether the writ of prohibition is here the appropriate remedy; and (2) whether the banking act of 1933 is constitutional with especial reference to that portion of section 4 forbidding the bringing of suits against the banks by any one without the written permission of the Governor. In our discussion of these questions, we shall necessarily refer to and dispose of the several contentions of the respondents.

[fol. 45] We desire, in the outset, to call attention to the very recent case of Ex parte Jones, 160 S. C. 63, 158 S. E. 134, where Hon. Mendel L. Smith, Acting Associate Justice, in an able and elaborate opinion, discusses the history and law of prohibition, citing most of the cases in this State dealing with the question. See also Ex parte Wingate, 166 S. C. 440, 165 S. E. 176, the latest utterance of this Court on the subject.

As the contention, that prohibiton is an extraordinary prerogative writ and should be resorted to only in cases of necessity and when there is no other adequate ordinary remedy, is conceded, a discussion of that point is unnecessary. See Ex parte Jones, supra; Ex parte Wingate, supra; Spelling on Extraordinary Remedies, Vol. 2, section 1727; High on Extraordinary Remedies, section 765. The rule is that where the Court in which the original action is brought has jurisdiction and the usual remedies provided by law are adequate and complete, the writ should not issue. The respondent Gibbes contends that this proceeding falls within that class, the petitioners, defendants in Common Pleas, having a full and adequate remedy by appeal. The question, however, whether the remedy is inadequate, is one within the sound discretion of the Court to which application is made for the issuance of the writ and is to be determined on the facts of each particular case. And in this connection the Court may properly consider the delay and inconvenience incident to appeal, although the inadequacy of such remedy will not be tested solely by these considerations. It is to be kept in mind that the

right of prohibition is defeated, not by the exercise, but by the adequacy, of the remedy by appeal. 50 C. J. 686.

In the case at bar we conclude, upon consideration of the facts before us, that the remedy accorded the petitioners by appeal is not, in the existing circumstances requiring a speedy disposition of the questions presented to which we shall more particularly hereafter refer, such a completely adequate remedy as would justify the Court in refusing the writ on that ground.

With regard to the contention that a prohibition proceeding is not the proper way of testing the constitutionality of the act, "it seems to be the rule that the Court will not determine constitutional questions in a prohibition proceeding if the same questions may be raised in another proceeding which will furnish the applicant an adequate remedy". 22 R. C. L. 25. But the appellate Court will not refuse to grant relief by prohibition simply because to do so would necessitate the passing upon a constitutional question. Bell v. Court (Nev.), 1 L. R. A. (N. S.) 843; 22 R. C. L. 25. As we have held in this case that a completely adequate remedy by appeal is not afforded the petitioners in the circumstances, the necessity for passing upon the constitutional questions raised would not bar relief by prohibition.

It is also urged that the writ should not issue for the reason that the attention of the inferior Court was not called to its alleged lack or excess of jurisdiction. While it has been held that this is a prerequisite where prohibition is sought, it is also held that the rule is nothing more than a "mere rule of courtesy, and not in any sense rigid". State of Wyoming ex rel. Poston v. District Court, 227 Pac. 378, 35 A. L. R. 1082, and note. And the question whether the objection was made in the Court below is immaterial where the lack of jurisdiction is apparent on the face of the original suit or where the Judge of the inferior Court appears in the prohibition proceeding and asserts his jurisdiction. Ex rel. Poston, supra; Oldroyd v. McRea, 235 Pac. 580, 40 A. L. R. 230; State v. Scott, 1 Bailey 294. It is evident that this contention is without merit.

II

We turn now to the question of the constitutionality of the act. It is well established that the banking business

[fol. 46] is affected with a public interest so as to be subject to legislative regulation and control as a part of the police power of the State (2 R. C. L. 379, 7 C. J. 480-481); and that the Legislature has authority to prescribe and limit the method and manner of enforcing depositors' rights against the banks and the stockholders thereof (Graham, Receiver v. Berry, 166 S. C. 277, 164 S. E. 755; Branchville Motor Company v. Addén, 158 S. C. 90, 155 S. E. 277; Fischer v. Chisholm, 159 S. C. 395, 157 S. E. 139; Ex parte Love, 158 S. C. 249, 155 S. E. 428).

In Witt, Receiver, v. Peoples State Bank, 166 S. C. 1, 164 S. E. 306, the Court said: "The regulation of banks and legislation as to insolvent banks are special matters peculiarly within the province of legislative action. 2 R. C. L. 379; 12 C. J. 116; 7 C. J. 10 and 480; Noble State Bank v. Haskell, 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 142, 32 L. R. A. (N. S.) 1062, Ann. Cas. 1912 A 487."

For a very interesting discussion of this question, see Re Pittman, 31 Nev. 43, 99 P. 709; 22 L. R. A. (N. S.) 266. In that case the Court said:

"Indeed, it would be next to impossible to carry on the great business transactions of this country, which aggregate hundreds of billions of dollars annually, without the aid of a well-organized banking system. It needs no extended argument to establish the fact that the banking business is in a class by itself. The assertion of the fact should be sufficient."

And again:

"Common experience has abundantly demonstrated that the prosperity of the country is very largely influenced by public confidence in its banking institutions. Anything which tends to shake that confidence, and causes depositors in banks to withdraw their deposits, produces contraction in business which may result, and at times has resulted, in panics which have brought ruin and disaster to thousands, and seriously affected the welfare and happiness of the public generally for greater or less periods of time."

Also:

"To regulate the banking business so as to reduce to a minimum failures in this branch of business enterprise is

not only clearly within the powers of the legislative department of government, but it may also be said to be an imperative duty for the legislature to enact laws for the prevention, as far as possible, of bank failures."

The question, therefore, is, Was the Legislature justified, in view of the serious banking conditions prevailing throughout the State and generally, in the exercise of the police power of the State, in passing the banking act of 1933? It is contended that the portion of the act contained in section 4, which forbids the bringing of an action for any purpose against the banks by any one—which includes the depositors and stockholders—is unconstitutional, for the reasons that it deprives the respondent and other depositors of the bank of their property without due process of law, prevents their collection of the stockholders' liability guaranteed to them by the Constitution, and denies to them the right of a speedy remedy in the Courts for wrong sustained. To this question we have given serious thought.

It is evident that only under extraordinary and serious conditions, affecting the common good and general welfare, would the Legislature be justified in even temporarily suspending—as was done in this case—such rights; and, of course, this could be done, if at all, only under the police power, which is an attribute of sovereignty and necessary to the existence of government itself. The exercise of this power rests upon the maxim that one cannot use his own [fol. 47] property so as to injure the rights of others, and on that other well known maxim that the safety of the people is the supreme law. If the time comes in the life of any people when the common good and the general welfare demand it, the exercise and assumption of such power, through legislative action, is entirely justified. A police regulation, therefore, intended as such and not operating unreasonably beyond the occasion of its enactment, is not rendered void or invalid by the fact that it may incidentally affect some right guaranteed by the Constitution; it may not, however, unreasonably invade private rights or arbitrarily violate constitutional guaranties.

In order to sustain any legislation under the police power, the Courts must be able to see that its operation tends to preserve and insure the common good and general welfare;

and only in cases where the Legislature exceeds its powers, will the Courts interfere and set up their judgment against that of the lawmaking body. In short, the general rule is that the Legislature is primarily the judge as to what laws should be enacted for the protection and welfare of the State and its people; but, in the last analysis, the question of the validity of such measures so enacted is one for the Court.

We need not dwell here upon the serious conditions which prevailed in banking circles prior to and at the time of the passage of the 1933 act, and which still prevail, to a greater or less degree. These conditions are matters of common knowledge and existed, not only in this State, but throughout the nation. Even the solvent banks, because of general conditions, were unable to properly function. Many banking institutions were loaded with assets that could not be liquidated. Gold in large quantities was withdrawn for purposes of hoarding; lack of public confidence in the soundness of the banks caused the abnormal withdrawal of deposits; and a nightmare of uncertainty and panic threatened with disaster the business life of the country. It was only firm and timely action of the President of the United States and of the Governors of the several States which prevented the entire and immediate collapse of our financial system and the wrecking of our banking institutions everywhere. The causes that brought about these conditions are not here matters for consideration. We are concerned only with the undisputed existence of a serious emergency, imperatively requiring that something be done for the protection and safety of the public and for the common good; and the situation was of such nature as to require heroic action. It is evident that the Legislature, in its enactment of the 1933 law, intended to meet this emergency and thereby to provide a remedy and a method of administering banking affairs for the purpose of protecting, as far as possible, the property and rights of the public generally. Some of the banks were sound, but closed temporarily because of existing conditions; others, while not perhaps absolutely sound, were in such condition that they might by reorganization be made to function normally; while still others might be insolvent—and these being, in the circumstances, a menace to the whole system, required such special consideration and treatment as their peculiar conditions

might indicate, in order to obviate or lessen the general danger which they created. In such emergency we think the Legislature could and did properly exercise the police power of the State in the passage of the act.

It is also a matter of common knowledge that a great many banks are still unopened or functioning under restrictions. Which of these may be reorganized and which are hopelessly insolvent, are matters not yet finally determined. The Court fully appreciates the feelings of the many depositors in these institutions. In their honest desire, however, to obtain what they conceive to be rightly theirs, the depositors and others affected must not be allowed to so use their own property as to bring an irreparable calamity upon the general public. The appointment of receivers for any of these banks would have the effect of taking out of the hands of the Governor the administration of the affairs of such banks and placing them in the control of the courts, for liquidation. And if the appointment of receivers is sanctioned, doubtless many suits will be instituted for that purpose, which would result in chaos and confusion in the reorganization and rehabilitation of the banking system of the State, and thereby defeat the very purpose of the act.

[fol. 48] It is hardly necessary to repeat what we have already indicated, that the act was intended to be only a suspension of certain legal rights enjoyed by the citizen in normal times, and such suspension can exist so long only as the necessity for it appears.

The Writ of Prohibition will issue as prayed for.

And it is so ordered.

Carter and Bonham, JJ., concur. Blease, C. J., concurs in part and dissents in part.

IN SUPREME COURT OF SOUTH CAROLINA

OPINION

BLEASE, C. J. (concurring and dissenting):

While being in thorough accord with the holding in this Opinion to the effect that the Act in question is not violative of the Constitution of the State, I do not think prohibition properly lies, and with the conclusion announced in the Opinion as to that, I am not in agreement. The Court of

Common Pleas had proper jurisdiction of this cause, and, when a Court, inferior to this, is acting within its jurisdiction, a Writ of Prohibition should not be granted by this Court; and that is the Rule announced by previous decisions of this Court.

[fol. 49] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR APPEAL

To the Honorable Supreme Court of the State of South Carolina:

The above named Hunter A. Gibbes, respondent in the State Supreme Court, appellant here, representing himself and all other depositors of the Central Union Bank of South Carolina similarly situated, feeling himself aggrieved by the decision and decree rendered and entered in the above entitled cause on the 11th day of May, A. D., 1933, does hereby appeal from said Decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United [fol. 50] States, sitting at Washington, D. C., under the rules of such Court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of him be made.

Your petitioner, appellant, herewith presents the Assignments of Error upon which he will rely in the prosecution of his appeal herein.

D. W. Robinson, Attorney for Appellant.

May 17, 1933.

[fol. 51] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER ALLOWING APPEAL

On motion of D. W. Robinson, Esq., counsel for appellant, it is hereby ordered:

That an appeal to the Supreme Court of the United States from the decree and decision heretofore filed and entered by the Supreme Court of the State of South Carolina on the 11th day of May, 1933, be, and the same is hereby allowed, and that a certified transcript of the record, exhibits and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of One thousand ($1,000.00) Dollars.

It is further ordered that the time for the petitioner appellant to file and docket the appeal herein be extended [fol. 52] for thirty (30) days from this date.

(Sd.) Eugene S. Blease, Chief Justice.

May 18, 1933.

[fol. 53] In Supreme Court of South Carolina

[Title omitted]

Assignment of Errors

Now comes the Respondent, Hunter A. Gibbes, in the above entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above entitled cause, from the decision and decree of the Supreme Court of the State of South Carolina made on the 11th day of May, 1933:

I

That the Supreme Court of the State of South Carolina erred in sustaining the petition for and granting to the petitioners therein (appellees herein) the Writ of Prohibition and injunction, and in so doing upholding the validity and constitutionality of the Act of the General Assembly of the State of South Carolina approved March 9, 1933, entitled "A Bill to Authorize and Direct the Governor [fol. 54] of the State of South Carolina to Assume Plenary Control of the State Banking Department and of all Banks, Banking Institutions, Building & Loan Associations, Cash Depositories or Other Institutions Doing a Banking Business of Whatever Nature, and to Make, Issue and Promulgate Such Rules, Regulations and/or Instructions as May

be Necessary to Direct, Control and Protect Such Banks, Banking Institutions, Building & Loan Associations and Cash Depositories and Depositors and to Provide Penalties for Violation of Such Rules and Regulations, and to Regulate Litigation in Reference Thereto, and to Authorize the Establishment or Incorporation of a State Clearing House Association if Necessary", because the said Act as interpreted and administered by said Governor and as construed by the Supreme Court of the State of South Carolina in this case authorizes the arbitrary taking, withholding and use by the Governor of the property, including the deposit of the appellant and others in like condition, of said bank, through an appointee made by him without notice or an opportunity to said petitioner, appellant and/or other depositors and creditors to be heard, without compensation and without due process of law, or any process of law, in violation of the Constitution of the United States.

II

That the Supreme Court of the State of South Carolina erred in sustaining the petition for and granting to the Petitioners (appellees) the Writ of Prohibition and injunction herein, because the said Act of the General Assembly of the State of South Carolina as interpreted and administered, and as construed by the Supreme Court of South Carolina, impairs the obligation of the contractual rights of the petitioner, depositor, and other depositors and creditors in and of said Bank; and deprives said depositors and [fols. 55 & 55½] creditors of their property without due process of law; in that:

(a) Under the Constitution and laws of the State of South Carolina, the assets of an insolvent bank, the property of the depositors and creditors, are impressed with a trust for the use and benefit of such depositors and creditors; and under said Constitution and laws of the State of South Carolina the stockholders of a bank are liable to the depositors thereof in an amount additional and equal to the stock held by them in the bank, and these are vested, contractual property rights of depositors.

(b) By the said Act of the General Assembly of the State of South Carolina as interpreted and administered by the said Governor and as interpreted and construed by the said

decision of the Supreme Court of South Carolina, these property, contractual and/or vested rights of petitioner and other like depositors are impaired and taken without compensation and without due process, all in violation of the Constitution of the United States and amendment XIV thereof.

Wherefore the appellant prays that the said judgment and decree of the Supreme Court of the State of South Carolina be reversed.

D. W. Robinson, Attorney for Appellant.

May 17, 1933.

[fols. 56-60½] Bond on appeal for $1,000, approved May 20, 1933, omitted in printing.

[fols. 61-65] Citation in usual form, showing service on John M. Daniel et al., omitted in printing.

[fol. 66] SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLANT I. OF POINTS WHICH HE INTENDS TO RELY ON; II. OF THE PARTS OF THE RECORD WHICH HE THINKS NECESSARY FOR THE CONSIDERATION THEREOF—Filed June 1, 1933

In accordance with the rules of this Honorable Court, the appellant, Hunter A. Gibbes hereby designates: (1) Points on which he intends to rely in prosecuting his appeal from the decision of the Supreme Court of the State of South Carolina; and (2) parts of the record deemed necessary for the consideration thereof, to-wit:

I

The jurisdiction of this the Supreme Court of the United States is invoked on the ground:

1. The Act of the General Assembly of the State of South Carolina passed and ratified on March 9, 1933, en-[fol. 67] titled "A Bill to Authorize and Direct the Gover-

nor of the State of South Carolina to Assume Plenary Control of the State Banking Department and of All Banks, Banking Institutions, Building and Loan Associations, Cash Depositories or Other Institutions Doing a Banking Business of Whatever Nature, and to Make, Issue and Promulgate Such Rules, Regulations and or Instructions as May be Necessary to Direct, Control and Protect Such Banks, Banking Institutions, Building and Loan Associations and Cash Depositories and Depositors and to Provide Penalties for Violation of such Rules and Regulations, and to Regulate Litigation in Reference Thereto, and to Authorize the Establishment or Incorporation of a State Clearing House Association if Necessary", as the said Act is construed and interpreted by the decision of the Supreme Court of the State of South Carolina, takes from the appellant, Hunter A. Gibbes, his property and property rights without compensation and without due process of law; and the said Act, as construed by said decision of the Supreme Court of the State of South Carolina, impairs the contractual rights of Hunter A. Gibbes, all in violation of the Constitution of the United States.

The jurisdiction of this the Supreme Court of the United States is invoked for the foregoing reasons under the provisions of Section 237 of the Judicial Code of the United States as amended. See U. S. C. A., Title 28, Sec. 344 (a) and (b).

Further Statement

As a further and fuller statement of the invalidity and unconstitutionality of the said law, the appellant would respectfully show:

1. That the appellant on and before March 4, 1933, was a depositor of The Central Union Bank of South Carolina, a [fol. 68] corporation engaged in general banking business, with its principal place of business in Richland County, State of South Carolina, with branches elsewhere. See complaint in original action in Court of Common Pleas for Richland County, State of South Carolina of Gibbes v. Zimmerman, etc., paragraphs 1 and 3.

2. That on the 4th day of March, 1933, the Bank suspended its business as a bank and has since paid out nothing to its depositors, and since that time has failed and

refused to pay anything to depositors, except deposits made since said date. See same Complaint, Pars. 1 and 3.

3. That subsequent thereto, on March 9, 1933, a law was duly enacted by the General Assembly of the State of South Carolina, entitled as hereinabove set out, the full text of which Act appears in and attached to the pleadings in State of South Carolina, Ex Relatione Simpson J. Zimmerman, et al., v. Hunter A. Gibbes, et al., in the Supreme Court of the State of South Carolina, and reference to the same is here made.

4. That pursuant to said law, the Governor of the State of South Carolina, arbitrarily and without any notice to appellant or other depositors or creditors of said bank, undertook to appoint Simpson J. Zimmerman, a stockholder, vice-president and director of said Bank, as its Conservator and to authorize him to take full charge, possession and control of said Bank, its assets and property, and since that time said Simpson J. Zimmerman, Conservator, has paid out nothing to the depositors, including appellant, and refuses to pay such depositors anything on account of any of the deposits in said bank existing on or before March 4, 1933; but the said Bank, under said Conservator, has been receiving funds in the nature of special trust accounts and exercising banking functions in receiving and paying out such deposits, the expense of such operation not being borne by the special trust accounts themselves, but a portion thereof being charged against the assets of the bank (including the said deposit of the appellant, Hunter A. Gibbes), which assets as they existed on March 4, 1933, should be preserved [fol. 69] and not depleted or impaired, and applied to the liquidation of the amounts due to the depositors and creditors, including the appellant. Same Complaint, pars. 3 and 5.

5. That under said Conservator and his management the Appellant is denied access to the records of the Bank, and of the State Bank Examiner and of the State Treasurer, which would show the true condition of the bank and its possibility of reopening, and the appellant is denied the right to bring any action to enforce his rights, or to protect and preserve the property and assets of said Bank for the

benefit of the depositors (including himself) and other creditors except with leave of the Governor, and the Governor has refused permission to bring such suit. Same Complaint, pars. 6 and 7.

6. That the Bank is insolvent and there is no chance except from liquidation through the courts for the depositors and other creditors to obtain payment of their deposits and debts. Same Complaint, pars. 9, 10, and 14.

7. Further, that in and by the Constitution and the statutes of the State of South Carolina, the stockholders of an insolvent Bank are made individually liable in an amount additional and equal to the par face value of their respective holdings of stock in such bank to the depositors of any such bank. Constitution of S. C., Art. IX, § 18; Code of Laws of South Carolina, Vol. III, § 7868. This liability is contractual in its nature, the stockholder making the subscription in contemplation of the applicable law. Fischer v. Chisholm, 159 S. C. 395, 398, 157 S. E. 139. The only method for collecting and enforcing this liability of the stockholders is through a receiver appointed by a Court of Equity to liquidate and administer the assets of such a bank. Code of Laws of S. C., 1932, Vol. III, Sec. 7856; Branchville Motor Co. v. Addeu, 158 S. C. 90, 94, 6, 155 S. E. 277 (2, 3).

[fol. 70] By the Act of March 9, 1933, as construed and interpreted by the Supreme Court of the State of South Carolina in the case, from which this appeal is taken, this contractual right, and the remedy to enforce the same, of the appellant and other like depositors is impaired and taken.

8. That other creditors of the Bank hold considerable securities of the bank with valuable collaterals and are apt to use the same to the sacrifice of the same and to the injury of the other creditors and depositors, including appellant, and there is no adequate remedy except in an action of this kind, calling in all depositors and creditors, enjoining other suits and administering and liquidating the assets of the bank.

9. Upon the institution of the action in the Court of Common Pleas for Richland County, State of South Carolina, by the appellant to enforce and protect the rights of him-

self and other depositors of said bank, the defendants therein filed a petition in the original jurisdiction of the Supreme Court of the State of South Carolina for the purpose of obtaining a writ of prohibition and injunction against the proceeding in the Court of Common Pleas, and the said Court on the hearing thereof rendered a final decision and judgment on May 14, 1933, from which this appeal is taken, granting the writ of prohibition and injunction, holding the said Act of the General Assembly of South Carolina valid and enjoining the appellant from claiming or enforcing any rights against the said bank, and its said Conservator, as will more fully appear on reference to the opinion and judgment in said case, herein set forth in full.

10. In that case, Hunter A. Gibbes, representing himself and all other depositors of the Bank, filed a demurrer and a motion to dismiss and also filed a return and answer, and in and by said return and answer, paragraph 3 (a), (b), directly questions the validity of the said Banking Act of the [fol. 71] State of South Carolina upon the grounds that said Act as administered by the petitioner and the Banking Board of South Carolina, and as contended for by the petitioners in the said proceeding for writ of prohibition in the original jurisdiction of the Supreme Court of the State of South Carolina (and as determined by the decision of the Supreme Court of the State of South Carolina) is contrary to the Constitution of the United States and is null and void, in that it:

(a) Authorizes the taking and use of the property of the appellant and other depositors and creditors of said Bank without notice, consent, compensation or due process of law;

(b) Takes and impairs the obligation of the contractual rights of the appellant and other like depositors in said bank to proceed against the liability of the stockholders.

All in violation of the rights of the appellant guaranteed and protected by the Constitution of the United States. See Return and Answer of Hunter A. Gibbes in the case in the original jurisdiction of the Supreme Court of South Carolina, paragraph 3, (a) and (b).

II

The appellant further designates the following parts of the record which he thinks necessary for the consideration of the appeal herein, to wit:

1. The petition and pleadings on application for Writ of prohibition in the original jurisdiction of the Supreme Court of the State of South Carolina, together with the alternative writ of prohibition, together with the exhibits thereto attached, consisting of the Rule to Show Cause issued by W. H. Townsend, Judge of the Fifth Judicial Circuit on April 11, 1933, in the case of Hunter A. Gibbes, representing himself and all other depositors similarly situated, against Simpson J. Zimmerman, individually and as [fol. 72] Conservator of Central Union Bank, Hon. Ibra C. Blackwood, Governor of the State of South Carolina, Hon. Julian Searborough, as a member of and representing the South Carolina Board of Bank Control, Albert S. Faut, State Bank Examiner; Richland County, South Carolina; the City of Columbia, and John Doe, defendants; the complaint in the Court of Common Pleas for Richland County, State of South Carolina, in the same case, and the Act of the General Assembly of the State of South Carolina, attached thereto, enacted March 9, 1933, entitled: "A Bill To Authorize and Direct the Governor of the State of South Carolina to Assume Plenary Control of the State Banking Department and of All Banks, Banking Institutions, Building and Loan Associations, Cash Depositories or Other Institutions Doing a Banking Business of Whatever Nature, and to Make, Issue and Promulgate Such Rules, Regulations and/or Instructions as May be Necessary to Direct, Control and Protect Such Banks, Banking Institutions, Building and Loan Associations and Cash Depositories and Depositors and to Provide Penalties for Violation of Such Rules and Regulations, and to Regulate Litigation in Reference Thereto, and to Authorize the Establishment or Incorporation of a State Clearing House Association if Necessary."

2. Also including the Demurrer and Motion to Dismiss in said proceeding dated April 14, 1933.

3. Also including the Return and Answer of Hunter A. Gibbes in said proceeding, dated April 14, 1933.

4. Also opinion, decision and judgment of the Supreme Court of South Carolina in said proceeding, rendered and filed May 11, 1933.

5. Also Petition for Appeal, Order Allowing Appeal and Assignment of Errors served and filed herein by appellant, dated May 17, 1933.

D. W. Robinson, Attorney for Hunter A. Gibbes, Appellant.

May 24, 1933.

[fols. 73 & 73a] Service of the foregoing Designation by Appellant accepted and copy thereof retained this the 24 day of May, 1933.

John M. Daniel, Atty. General of S. C.; Melton & Belser, Attorneys for Appellees.

[fol. 73b] [File endorsement omitted.]

[fol. 74] SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEES OF ADDITIONAL PARTS OF THE RECORD WHICH THEY THINK MATERIAL HEREIN Filed June 5, 1933

In accordance with the rules of this Honorable Court the appellees above named hereby designate the following additional parts of the records which they think material for consideration herein, to wit:

I

The order of the Governor annexed as an exhibit to the original petition in this cause providing rules and regulations for the appointment of conservators for State Banks and Cash Depositories in the State of South Carolina adopted and approved by the Governor of South Carolina on March 9, 1933, embraced in paragraphs (1), (2), (3), (4), and (5) of said exhibit annexed to the original petition for prohibition.

[fol. 75] II

Return to alternative writ of prohibition by Honorable W. H. Townsend, Judge of the Fifth Judicial Circuit of South Carolina.

John M. Daniel, Atty. General; J. Ivey Humphreys, Asst. Atty. General; Melton & Belser, Attorneys for Appellees.

June 2, 1933.

[fol. 76] State of South Carolina,
County of Richland:

Before me personally appeared Helen Clayton, who, being duly sworn, says that on the 2nd day of June, 1933, at Columbia, S. C., she served the foregoing Designation by Appellees upon D. W. Robinson, attorney for appellant by delivering a copy thereof to D. W. Robinson, Jr., at the office of said D. W. Robinson and leaving the same with him for the said D. W. Robinson, who was temporarily absent from said office.

Helen Clayton.

Sworn to before me this 2nd day of June, 1933.
L. F. Calvo, Notary Public of S. C. (L. S.)

[fol. 77] [File endorsement omitted.]

Endorsed on cover: File No. 37,720. South Carolina Supreme Court. Term No. 117. Hunter A. Gibbes, representing himself and all other depositors of the Central Union Bank of South Carolina, etc., appellant, vs. Simpson J. Zimmerman, individually and as conservator of the Central Union Bank of South Carolina, et al. Filed June 1, 1933. File No. 117, O. T., 1933.